

**NOTE!** This is the **first release** of revised versions of Env-Wt 100-900. Each chapter contains proposed language, shown in fixed text only, that reflects the several years of research and drafting that have preceded this release. The language also reflects changes to applicable statutes and changes in standard language now being used throughout the administrative rules of the Department of Environmental Services.

**THE DRAFT RULES ARE NOT FINISHED!!** These drafts are being released for the **express purpose of getting stakeholder input** on all aspects of the proposed rules. The only substantive portions of these drafts that cannot be changed in rulemaking are those that reflect statutory requirements.

**NHDES has not initiated the formal rulemaking process to adopt the proposed rules and will not do so until after receiving input from stakeholders. BUT NOTE: Env-Wt 901.03 and Env-Wt 902-904 are scheduled to expire on May 12, 2018. NHDES intends to readopt that chapter WITHOUT ANY CHANGES so the existing rules will remain in place while the revision process continues.**

**RSA 482-A:1 Finding of Public Purpose.** – It is found to be for the public good and welfare of this state to protect and preserve its submerged lands under tidal and fresh waters and its wetlands, (both salt water and fresh-water), as herein defined, from despoliation and unregulated alteration, because such despoliation or unregulated alteration will adversely affect the value of such areas as sources of nutrients for finfish, crustacea, shellfish and wildlife of significant value, will damage or destroy habitats and reproduction areas for plants, fish and wildlife of importance, will eliminate, depreciate or obstruct the commerce, recreation and aesthetic enjoyment of the public, will be detrimental to adequate groundwater levels, will adversely affect stream channels and their ability to handle the runoff of waters, will disturb and reduce the natural ability of wetlands to absorb flood waters and silt, thus increasing general flood damage and the silting of open water channels, and will otherwise adversely affect the interests of the general public.

#### Chapter Env-Wt 100 DEFINITIONS; ACCESS TO RECORDS

	Proposed Changes
Overall Intent	<ul style="list-style-type: none"> <li>• Restructure, clarify. Add over 50 definitions to clarify terms used.</li> </ul>
Of Note:	
102	<ul style="list-style-type: none"> <li>• Split into two Parts so all definitions will have a standard (2-digit) section number.</li> <li>• Revise existing definitions to be clearer.</li> <li>• Add definitions so the rules in later chapters will be clearer.</li> <li>• Consolidate definitions of terms that mean the same thing (as required by <i>Drafting and Procedure Manual for Administrative Rules</i>, effective 5/1/16, as amended 7-21-16). <u>For example</u>, instead of separately defining <i>dock</i>, <i>pier</i>, and <i>wharf</i>, the proposed rules define <i>docking structure</i> and state that the term includes dock, pier, and wharf.</li> </ul>

**Chapter Env-Wt 200 PROCEDURES FOR HEARINGS, APPEALS, AND WAIVER REQUESTS**

	Proposed Changes
Overall Intent	<ul style="list-style-type: none"> <li>Clarify existing provisions (rules were revised when readopted in 2013).</li> </ul>
Of Note:	
204.03(a), (b)	<ul style="list-style-type: none"> <li>Revise to require an email address <b>or</b> fax number (not both).</li> </ul>
204.04(c)	<ul style="list-style-type: none"> <li>Clearly state that the signer of a waiver request is subject to penalties for falsification in official matters (RSA 641).</li> </ul>

**Chapter Env-Wt 300 PERMITS AND OTHER AUTHORIZATIONS; CONDITIONS APPLICABLE TO ALL WORK IN JURISDICTIONAL AREAS**

	Proposed Changes
Overall Intent	<ul style="list-style-type: none"> <li>Consolidate and clarify all requirements for obtaining permits/other authorizations into one chapter.</li> <li>Shorten review time and expand the number of projects that qualify for streamlined review.</li> <li>Add pre-filing preparation and coordination with conservation commission and LAC, either as required process or as optional process to further shorten review times.</li> </ul>
Of Note:	
306	<ul style="list-style-type: none"> <li>Identify which activities/projects require a permit or other authorization and what type of permit/authorization is needed. [see “Authorizations under RSA 482-A In Order of Increasing Review”, attached]</li> </ul>
307	<ul style="list-style-type: none"> <li>Consolidate and clarify conditions that apply to any/all work in jurisdictional areas, including clarification of: <ul style="list-style-type: none"> <li>Water quality standards and necessary water quality protection measures;</li> <li>Conditions to protect fishery and breeding areas, protect against invasive species, protect rare, threatened, or endangered species; protect vegetated shorelines, and protect designated prime wetlands;</li> <li>Conditions for using heavy equipment in wetlands;</li> <li>Requirements for restoring work sites; and</li> <li>The requirement for work to be done in accordance with approved plans.</li> </ul> </li> <li>Reduce setbacks to abutting property from 20 feet to 10 feet/locally-required setback.</li> <li>Update the reference to the Forestry BMP manual to cite the 2016 edition.</li> </ul>
308	<ul style="list-style-type: none"> <li>Clearly identify what activities/projects are exempt from permitting and the conditions that apply to such activities.</li> <li>Clearly identify what activities are prohibited or limited by statute.</li> <li>Clearly identify what activities/projects are covered by statutory permits by notification (SPNs).</li> <li>Clearly establish how an SPN can be activated.</li> <li>Clarify post-notification requirements for SPNs and conditions that apply to activities/projects covered by SPNs.</li> </ul>
309	<ul style="list-style-type: none"> <li>Establish clear criteria and procedures for Lower Scrutiny Approvals (LSAs): <ul style="list-style-type: none"> <li>RSA 482-A:11, VII: Activities that may be conducted without a permit/authorization; and Activities that may be conducted without a permit if the project is registered with NHDES.</li> <li>RSA 482-A: 11, VI-a: Permit by Notification (PBN) for low/minimum impact projects that meet all standard conditions.</li> </ul> </li> <li>Require pre-application identification of special resource areas that may impact project design or process.</li> <li>Clarify NHB DataCheck Tool process coordination.</li> </ul>

**Chapter Env-Wt 300 PERMITS AND OTHER AUTHORIZATIONS; CONDITIONS APPLICABLE TO ALL WORK IN JURISDICTIONAL AREAS**

	Proposed Changes
310	<ul style="list-style-type: none"> <li>Establish clear criteria and procedures for Expedited Permits (EXP).</li> <li>Establish complete criteria and procedures for Small Motor Mineral Dredging.</li> </ul>
311	<ul style="list-style-type: none"> <li>Establish clear expectations for applications for standard permits (RSA 482-A:3, I), including plans, maps and other attachments, info if compensatory mitigation is required, resource-specific information, functional assessment, required signatures and certifications.</li> <li>Require [?] pre-filing consultation with Conservation Commission and LAC.</li> <li>Clarify process to amend applications.</li> </ul>
312	<ul style="list-style-type: none"> <li>Clarify processing and review procedures for standard permits, including identification of files, administrative completeness (application and compensatory mitigation information, if required), and technical review.</li> </ul>
313	<ul style="list-style-type: none"> <li>Consolidate and clarify procedures and criteria for determining whether to grant applications for standard permits.</li> <li>Clarify requirements for demonstrating need for impacts to jurisdictional areas and for avoidance/minimization.</li> </ul>
314	<ul style="list-style-type: none"> <li>Consolidate, clarify permit acceptance and post-permit-issuance requirements.</li> <li>Require notification prior to initiating construction.</li> <li>Clarify criteria and procedures for extending permits, transferring permits, and amending permits after issuance.</li> <li>Clarify requirements for Notice of Completion and certificate of compliance.</li> </ul>
315	<ul style="list-style-type: none"> <li>Clarify emergency permitting provisions (from 5 days of event now to one week of discovery for need of emergency in new rule)</li> </ul>
316	<ul style="list-style-type: none"> <li>Clarify procedures, criteria for suspending or revoking permits/other authorizations</li> </ul>

**Chapter Env-Wt 400 DELINEATION AND CLASSIFICATION OF JURISDICTIONAL AREAS; CLASSIFICATION OF PROJECTS**

	Proposed Changes
Overall Intent	<ul style="list-style-type: none"> <li>Replace existing chapter re: Shoreline Structures with chapter on Delineation, Classification (Shoreline Structures to be covered in Env-Wt 500). Clarify and update delineation methods and manuals. Establish standards for overall project classifications.</li> </ul>
Of Note:	
406	<ul style="list-style-type: none"> <li>Revised, expanded version of existing Env-Wt 301, updated to include new delineation and assessment manuals.</li> <li>Clarify which projects do not require delineations; add a new section on stream delineation.</li> </ul>
407	<ul style="list-style-type: none"> <li>Clarify how projects are classified.</li> <li>Identify those jurisdictional areas in which projects will require a standard permit regardless of type or size (“Resource Disqualifications”).</li> <li>Change the size ranges so that top limit for minor projects matches the threshold for compensatory mitigation.</li> <li>Identify projects that will not be subject to the size or resource type limits.</li> <li>Clarify conditions for projects in special resource areas, fill in public waters, and aggregation of projects based on consistent scheme of development, same property, or same wetlands complex.</li> </ul>

**Chapter Env-Wt 500 PROJECT-SPECIFIC REQUIREMENTS - NON-TIDAL AREAS**

	Proposed Changes
Overall Intent	<ul style="list-style-type: none"> <li>Replace entire chapter with project-specific requirements for projects in non-tidal jurisdictional areas, including project-specific approval criteria, design criteria, information required, and project classification for over 15 types of projects/activities.</li> <li>THIS CHAPTER NEEDS A LOT OF STAKEHOLDER INPUT!</li> </ul>
Of Note:	
510	<ul style="list-style-type: none"> <li>Aquatic Vegetation Control includes exotic aquatic weed control and native aquatic plant removal.</li> </ul>
511	<ul style="list-style-type: none"> <li>Standards for beaches; allow shorefront deck in lieu of beach.</li> </ul>
513-514	<ul style="list-style-type: none"> <li>Private Docking Structures; Commercial Docking Structures, Public Docking Structures, Docking Structures At Marinas <ul style="list-style-type: none"> <li>Establish standard of 100 SF of dock per 25 LF of frontage with 900 SF maximum and 200 SF minimum</li> </ul> </li> </ul>
516 - 518	<ul style="list-style-type: none"> <li>Bank/Shoreline Stabilization: All Projects; Vegetative And Bioengineering; Hard-Scape Methods</li> </ul>
524, 526	<ul style="list-style-type: none"> <li>Forestry, Agriculture</li> </ul>
528	<ul style="list-style-type: none"> <li>Dredging Projects</li> </ul>
530	<ul style="list-style-type: none"> <li>Restoration/Enhancement Activities</li> </ul>

**Chapter Env-Wt 600 COASTAL LANDS AND TIDAL WATERS**

	Proposed Changes
Overall Intent	<ul style="list-style-type: none"> <li>Substantial revisions to consolidate all requirements for tidal jurisdictional areas into one chapter.</li> <li>Establish standards specific to projects in coastal areas.</li> </ul>
Of Note:	
602	<ul style="list-style-type: none"> <li>Definitions that relate primarily to chapter 600 included here (not in chapter 100) to facilitate use of chapter.</li> </ul>
603	<ul style="list-style-type: none"> <li>Identify required application information for projects in coastal areas, including data screening.</li> <li>Clarify what information is required relative to water depth.</li> <li>Require acknowledgement of predicted sea level rise.</li> </ul>
604, 605	<ul style="list-style-type: none"> <li>Demonstration of need; avoidance &amp; minimization (A/V); compensatory mitigation specific to projects in coastal areas.</li> </ul>
607-612	<i>Specific A/V, design requirements, project classifications, required application information, other issues specific to identified topic</i>
607*	<ul style="list-style-type: none"> <li>Overwater structures: residential docks, commercial docks (public access points, working waterfronts, marinas), industrial docks.</li> </ul>
608	<ul style="list-style-type: none"> <li>Dredging Activities.</li> </ul>
609	<ul style="list-style-type: none"> <li>Tidal Beach Maintenance and Stabilization.</li> </ul>
610	<ul style="list-style-type: none"> <li>Tidal Shoreline Stabilization.</li> </ul>
611	<ul style="list-style-type: none"> <li>Tidal Buffer Zone and Protected Shoreland: establish consistency with overlapping tidal buffer zone and shoreland protection standards.</li> </ul>
612	<ul style="list-style-type: none"> <li>Sand Dunes.</li> </ul>

\* Part 606 currently exists; decision not yet made whether to reserve or use Part number.

**Chapter Env-Wt 700 PRIME WETLANDS**

	<b>Proposed Changes</b>
Overall Intent	<ul style="list-style-type: none"> <li>Clarify and update to reflect statutory changes; provide greater detail on procedures and criteria including adding criteria for prime wetland waiver processes.</li> </ul>
Of Note:	
701.02	<ul style="list-style-type: none"> <li>Table of statutory parameters for designating prime wetlands and adjacent areas with effective dates,</li> </ul>
702	<ul style="list-style-type: none"> <li>Criteria and procedures for designation of prime wetlands.</li> </ul>
703	<ul style="list-style-type: none"> <li>Maps and documents to support prime wetlands designation.</li> </ul>
704	<ul style="list-style-type: none"> <li>Supplementary information.</li> </ul>
705	<ul style="list-style-type: none"> <li>Notice of permit issuance.</li> </ul>
706	<ul style="list-style-type: none"> <li>Rules will establish criteria and procedures for waivers authorized by:               <ul style="list-style-type: none"> <li>RSA 482-A:11, IV(b)(1) for forest management work in prime wetlands or a duly-established 100-foot buffer; and</li> <li>RSA 482-A:11, IV (c) for waivers for other activities in a duly-established 100-foot buffer.</li> </ul> </li> </ul>

**Chapter Env-Wt 800 COMPENSATORY MITIGATION**

	<b>Proposed Changes</b>
Overall Intent	<ul style="list-style-type: none"> <li>Few changes (rules were revised when readopted in 2016)</li> </ul>
Of Note:	
808.19(g)	<ul style="list-style-type: none"> <li>Stakeholder workgroup in process of developing more detailed allocation of points for stream crossing projects proposed for ARM Fund money; draft language not ready as of release date.</li> </ul>

**Chapter Env-Wt 900 STREAM CROSSINGS; CERTIFIED CULVERT MAINTAINER PROGRAM**

	<b>Proposed Changes</b>
Overall Intent	<ul style="list-style-type: none"> <li>Stream Crossing provisions: Add definitions, clarify project classification, information required, design criteria, and requirements for Alternative Designs. Expand number of projects that qualify for stream crossing repair and maintenance.</li> <li>CCM provisions: mostly edits, updates, clarifications, but see 905, below.</li> </ul>
Of Note:	
902	<ul style="list-style-type: none"> <li>New definitions to clarify commonly used and technical terms; add Tier 4 term for tidal stream crossings.</li> </ul>
903	<ul style="list-style-type: none"> <li>New tables to summarize stream crossing classifications and project classifications.</li> <li>Increase number of projects that qualify for the streamlined process.</li> <li>Clarify information needed for each type of stream crossing project.</li> </ul>
904	<ul style="list-style-type: none"> <li>Add tidal stream crossings (Tier 4).</li> </ul>
905	<ul style="list-style-type: none"> <li>Add details re: how to become an approved training provider.</li> <li>Establish obligations of approved providers.</li> <li>Add criteria and procedures for approved providers to request/receive delegation of certain administrative functions.</li> </ul>